

**Letter of Findings: 65-20200294
Indiana Overweight Proposed Assessment
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's (the "Department") official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Out-of-State Motor Carrier had provided sufficient evidence justifying the reduction of the oversize/overweight penalty.

ISSUE

I. Motor Vehicles - Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the assessment of an overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an out-of-state motor carrier. Based on publicly available information, Taxpayer operates two trucks and three trailers and employs two drivers.

In April 2019, Taxpayer operated one of its vehicles in Indiana on state highway 27. The vehicle was transporting soybeans. The vehicle was stopped by the state police. Taxpayer's vehicle was found to exceed the maximum permissible weight by 11,400 pounds.

The Indiana Department of Revenue ("Department") issued a "civil penalty" of \$5,000 which the Department, in its notice and proposed assessment to Taxpayer, described as "the maximum civil amount that may be imposed"

Taxpayer disagreed with the proposed \$5,000 penalty assessment and submitted a protest to that effect. In its protest submission, Taxpayer asked the Department to reduce the total penalty assessment to \$500. Taxpayer and the Department engaged in discussions to settle the liability for the amounts requested but no agreement could be reached.

This Letter of Findings is written to respond to Taxpayer's substantive and equitable objections to the \$5,000 penalty.

I. Motor Vehicles - Overweight Penalty.

DISCUSSION

Taxpayer argues that the overweight penalty "was simply a miscalculation of [] weight and driver error." Taxpayer also points out that it has already paid the \$2,000 traffic citation and fine, that the company is a "very small trucking operation," and that its business has been "affected by the Corona Virus." Moreover, Taxpayer points out that the incident was its "first overweight ticket."

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the

[D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop.

In this case, Taxpayer admits that its vehicle weighed more than the amount permitted by Indiana law and that it was operating without the requisite oversize/overweight permit. Taxpayer's vehicle weighed 91,400 pounds which was 11,400 pounds overweight.

The Department imposed the civil penalty in accordance with IC § 9-20-18-14.5 because Taxpayer failed to obtain the required permit under IC Art. 9-20. Taxpayer argues that the penalty given that the violation was due to an oversight on the driver's behalf, that it is a small trucking company experiencing economic difficulties, and that this was the first oversize/overweight violation it committed.

First, the Department notes that Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. Second, IC § 9-20-18-14.5 provides that a civil penalty issued by the Department under IC Art. 9-20 is (1) in addition to and separate from any other civil penalties issued under Titles 8 and 9 and (2) in addition to any fines imposed by a court. In this case, Taxpayer failed to obtain a permit before transporting cargo; therefore, it is appropriate for Taxpayer to receive a No Permit Civil Penalty.

However, the Department is not unsympathetic to Taxpayer's business difficulties and especially takes note of the fact that this appears to be Taxpayer's first oversize/overweight violation. In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is sustained in part and denied in part. The protest is sustained to the extent that the initially assessed \$5,000 amount is not due but denied to the extent that there is still a penalty due.

August 25, 2020

